IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2175 of 2002
with
SPECIAL CIVIL APPLICATION NO 2177 OF 2002
with
SPECIAL CIVIL APPLICATION NO 2208 OF 2002

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS
and
Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

UNION OF INDIA
Versus
AMINABIBI ABDULLA RASUL WIDOW OF ABDUL RASUL

Appearance:
1. Special Civil Application No. 2175 of 2002
MR MG NAGARKAR for Petitioner No. 1-2
MR YV SHAH for Respondent No. 1

CORAM : MR.JUSTICE KSHITIJ R.VYAS
and
MR.JUSTICE SHARAD D.DAVE

Date of decision: 27/03/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE KSHITIJ R.VYAS)

1. The Union of India through General Manager, Western Railway and another has preferred these three petitions challenging the judgment and order passed by the Labour Court, Godhra.

2. Special Civil Application No. 2175 of 2002 arises out of the judgment and order dated 23.08.2001 passed by the Labour Court, Godhra in Recovery Application No.4 of 1992 whereby the Labour Court held that the respondent is entitled for the amount of Rs.21,600/as ex-gratia pension to be recovered from the petitioners. In the said case, the husband of the respondent Abdul Rasul who was working as a Cook took voluntary retirement on 4.11.73 and later died on 3.4.75.

3. Special Civil Application No. 2177 of 2002 arises out of the judgment and order dated 23.08.2001 passed by the Labour Court, Godhra in Recovery Application No. 2 of 1993 whereby the Labour Court held that the respondent Raciliben Pagi is entitled for the amount of Rs. 28,800/towards ex-gratia payment. The husband of the said respondent Galabhai Pagi who was working as a Gangman took voluntary retirement on 15.5.1971 and later died on 10.4.1982.

4. Special Civil Application No. 2208 of 2002 arises out of the judgment and order dated 23.08.2001 passed by the Labour Court, Godhra in Recovery Application No. 3 of 1993 whereby the Labour Court held that the respondent Surajben Bhor is entitled for the amount of Rs. 28,800/towards the ex-gratia payment. The husband of the respondent Shivabhai Bhor took who was working as a Gangman took voluntary retirement on 7.4.1953 and later died on 23.12.1982.

5. Since the question of fact and law involved in these petitions is common, they are disposed of by this common judgment.

6. The only contention raised by the learned counsel Mr.Nagarkar appearing for the petitioner in all the three petitions is that the Labour Court has erred in holding that the application u/s 33(C)(2) of the Industrial Disputes Act is maintainable in the facts and circumstances of the present case. In the submission of

the learned counsel, grant of ex-gratia payment is not by way of right accrued to the applicant. Hence, the recovery application u/s 33(C)(2) of the I.D.Act is not maintainable. Sec. 33(C) of the Act deals with Recovery of money due from an employer. Sub-Sec. (2) of Sec.33(C) reads as under :

" Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to the rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government (within a period not exceeding three months) provided that where the presiding officer of the Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit."

7. On the plain reading of this provision, it is clear that the Labour Court is competent to decide the question as to whether the workman is entitled to receive money or any benefit which is capable of being computed in terms of money from the employer. In the instant case, the respondents have filed the recovery applications wherein they have prayed the monetary benefits in terms of ex-gratia pension arising out of the circular dated 08.08.89 exh. 23. There is no dispute to the fact that the respondents filled up the form for getting the pension on the basis of circular no. 4/1/87-P&PW(PIC) dated 13.6.88 and circular no. E/X/GP/789/11/E/NG/331 dated 12.10.90. In pursuance to the same, the respondents were asked by the petitioners to furnish the details of the bank account in triplicate. This would go to suggest that the petitioners have impliedly accepted the claim of the respondents. Since the matter was not persuaded, the recovery application was filed. The Labour Court, after considering the circular dated 8.8.89 and considering the law on the point rendered in different decisions by the High court as well as Supreme Court held that it has jurisdiction to decide the claim of the respondents and the respondents are entitled to get the ex-gratia pension. As per the circular dated 8.8.89 exh. 23 issued by the Divisional office, Vadodara of the petitioners.

8. In our opinion, the order of the Labour Court

cannot be faulted with. Unfortunately, our attention is not invited to the said circular dated 8.8.89 and on the contrary an attempt was made to invite our attention to some other circulars annexed to the petitions. We refused to the look to those documents on the ground that the same were not the part of the record before the Labour Court and the same cannot be produced for the first time in this petition under Article 227 of the Constitution of India suffice it to say that we are in total agreement with the reasonings of the Labour Court. We see no reasons to interfere with the findings and conclusions recorded by the Labour Court. There being no substance in any of the petitions, all the petitions are rejected. We direct the petitioners to deposit the amount awarded by the Labour Court within six weeks from today. On such deposit being made, the Labour Court shall pay to the concerned respondents by Account Payee Cheque. Rule is discharged. No order as to costs.

(K.R.VYAS, J)

(SHARAD D DAVE, J)

srilatha